



(1) The claimant, Kevin Taylor, injured his back on December 8, 1999, while working for Asplundh Tree Expert Company. The accident was witnessed by several of Mr. Taylor's co-workers. Mr. Taylor reported the accident to his general foreman, Michael Edgecomb, the next day. He did not request medical treatment at that time.

(2) On February 22, 2000, Mr. Taylor was taken to the company physician at Preferred Medical Associates by Mr. Edgecomb for treatment. Physical therapy was prescribed.

(3) Mr. Taylor's condition did not improve and he was referred by the company physician to neurosurgeon Paul Stein, M.D. Surgery was performed on May 9, 2000. Claimant was off work until June 9, 2000 when he was released with very light duty restrictions.

(4) The Appeals Board finds that Mr. Taylor's injury and medical treatment are directly related to the December 8, 1999 accident at work.

#### Conclusions of Law

(1) The Workers Compensation Act places the burden of proof upon claimant to establish his right to an award of compensation and to prove the conditions on which that right depends.<sup>3</sup> "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."<sup>4</sup> The Act is to be liberally construed to bring employers and employees within the provisions of the Act but those provisions are to be applied impartially to both.<sup>5</sup>

(2) An accidental injury is compensable under the Workers Compensation Act where the accident arose out of and in the course of employment.<sup>6</sup> The question of whether there has been an accidental injury arising out of and in the course of employment is a question of fact.<sup>7</sup>

(3) After observing Mr. Taylor testify, Judge Clark found his testimony credible and found that Mr. Taylor's slip and fall accident at work caused his low back injury.

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<sup>3</sup> K.S.A. 1999 Supp. 44-501(a); see also Chandler v. Central Oil Corp., 253 Kan. 50, 853 P.2d 649 (1993) and Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

<sup>4</sup> K.S.A. 1999 Supp. 44-508(g). See also In re Estate of Robinson, 236 Kan. 431, 690 P.2d 1383 (1984).

<sup>5</sup> K.S.A. 1999 Supp. 44-501(g).

<sup>6</sup> K.S.A. 44-501(a); Baxter v. L.T. Walls Constr. Co., 241 Kan. 588, 738 P.2d 445 (1987).

<sup>7</sup> Harris v. Bethany Medical Center, 21 Kan. App. 2d 804, 909 P.2d 657 (1995).

Considering Mr. Taylor's and Mr. Edgecomb's testimony and the medical records in evidence, the Appeals Board agrees. Therefore, the Appeals Board finds and concludes that Mr. Taylor sustained personal injury by accident arising out of and in the course of his employment with respondent and that timely notice of accident was given.

(4) As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.<sup>8</sup>

**WHEREFORE**, the Appeals Board affirms the Order dated June 20, 2000, entered by Administrative Law Judge John D. Clark.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 2000.

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BOARD MEMBER

c: Andrew E. Busch, Wichita, KS  
Gregory D. Worth, Lenexa, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director

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<sup>8</sup> K.S.A. 1999 Supp. 44-534a(a)(2).